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09/787,002	03/12/2001	Julije Ozegovic		1190

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EXAMINER

ALEXANDER, JESSE NELSON

ART UNIT	PAPER NUMBER
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2666

DATE MAILED: 10/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/787,002

Applicant(s)

OZEGOVIC, JULIJE

Examiner

Jesse N. Alexander

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. ____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

1. An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

Applicant is advised of the availability of the publication "Attorneys and Agents Registered to Practice Before the U.S. Patent and Trademark Office." This publication is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

2. This application may qualify for "Small Entity Status" and, therefore, applicant may be entitled to the payment of reduced fees. In order to establish small entity status for the purpose of paying small entity fees, applicant must make a determination of entitlement to small entity status under 37 CFR 1.27(f) and make an assertion of entitlement to small entity status in the manner set forth in 37 CFR 1.27(c)(1) or 37 CFR 1.27(c)(3). Accordingly, if applicant meets the requirements of 37 CFR 1.27(a), applicant must submit a written assertion of entitlement to small entity status under 37 CFR 1.27(c) before fees can be paid in the small entity amount. See 37 CFR 1.27(d). The assertion must be signed, clearly identifiable, and convey the concept of

entitlement to small entity status. See 37 CFR 1.27(c)(1). No particular form is required.

Specification

1. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.
2. The disclosure is objected to because of the following informalities: Specification structure is not correct.

Appropriate correction is required.

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.

- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Priority

3. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No. 09/787002, filed on 3/12/2001.

Claim Objections

4. Claims 1-15 objected to because of the following informalities:
- Claims 1-15: it is recommended that all references numbers in parenthesis be removed. The use of reference characters is to be considered as having no effect on the scope of the claims. See MPEP § 608.01(m).
 - Claim 1:
 - Based on the preamble " Packet switching data communication or packet networks with ... comprising" and the transitional phrase "constructed using" it is not clear whether applicant is claiming a method or an apparatus.
 - To establish antecedent basis the article "a" is normally used before limitations. For example

- line 2: “- a determined single server queuing systems model with a finite number of packets and a known total network capacity point....”
- Line 14: “...and are constructed using a receiver and a packet transmitter...”
- Claim 2:
 - The preamble of this claim is informal because it refers to a specific limitation within the independent claim. The preamble must refer to the preamble of the claim it depends upon. It is suggested that applicant consider “The packet switching data communication networks of claim 1, comprising ...a packet transmitter ...”
 - See the method of establishing antecedent basis above.
 - It is recommended that the phrase “plane/space” be replaced with “plane” in line 4
- Claim 3:
 - The preamble of this claim is informal see the objection to claim 2.
 - See the method of establishing antecedent basis above.
- Claim 4:
 - The preamble of this claim is informal see the objection to claim 2.
 - The phrases “calculation of” (line 4) and “check of” (line 2) are informal. It is recommended that applicant consider “method of calculating...” and “the method of checking” respectively.

- Claim 5-7:
 - The preambles of these claims are informal see the objection to claim 2.
- Claims 8-14: These claims appear to be method claims 8-13 and 15 that depend upon apparatus claims (1, 2, 3, 5, 13). They should be changed to apparatus claims, if that is what applicant intends.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1 through 15 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

7. Regarding claim 1:

- Claim 1 provides for the use of "terminals that do use said window-time plane..." (line 13) and "nodes that do or do not signal the total network capacity..." (line 16), but, since the claim does not set forth any steps involved in the

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method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

- Claim 1 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Regarding claim 2: This preamble of claim is improper and renders the claim indefinite. It is unclear from the informal structure of the claim whether this claim is a method or apparatus claim, and therefore it is impossible to determine its scope. Note the format of the claims in the patent(s) cited.

Regarding claim 3:

- This preamble of claim is improper and renders the claim indefinite. See above rejection of claim 2.
- Claim 3 recites the limitation "the packet sending initiation" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Regarding claim 4:

- This preamble of claim is improper and renders the claim indefinite. See above rejection of claim 2.

Regarding claim 5:

- This preamble of claim is improper and renders the claim indefinite. See above rejection of claim 2.
- Claim 5 provides for the use of "parameters provided by [the] receiver after acknowledgement [of] reception", but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.
- Claim 5 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Regarding claim 6:

- This preamble of claim is improper and renders the claim indefinite. See above rejection of claim 2.

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- Claim 6 recites the limitation "the packet header" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Regarding claim 7:

- This preamble of claim is improper and renders the claim indefinite. See above rejection of claim 2.
- Claim 7 recites the limitations:
 - "the forward last acknowledgment variable" in line 2.
 - "the value of last acknowledgement number received" in line 2.
 - "the opposite direction" in lines 3 and 7.

There are insufficient antecedent bases for these limitations in the claim.

Regarding claims 8-11:

- This preamble of claim is improper and renders the claim indefinite. See above rejection of claim 2.

Regarding claim 12:

- This preamble of claim is improper and renders the claim indefinite. See above rejection of claim 2.

- Claim 12 recites the limitation "network capacity estimation and packet pair methods" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Regarding claims 13-14:

- This preamble of claim is improper and renders the claim indefinite. See above rejection of claim 2.

8. The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors. For example:

- in claim 2, line 2 the word "it's" (contraction "it is") should be changed to "its" (possessive)
- in claim 2 the following words should be plural: "form", "packet", "exist", "include"

Allowable Subject Matter

9. Claim 1 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

10. Claims 2-14 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to show the state of the art with relates to data communication systems, and more particularly to a delay-based procedures for congestion control and avoidance in packet data communication networks.


- US-5,193,151 Jain, Rajendra K.
- US-5,367,523A Chang et al.
- US-5,617,409A Ozveren et al.
- US-6,208,653 B1 Ogawa et al.
- US-4,475,192 Fernow et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jesse N. Alexander whose telephone number is (571)272-3167. The examiner can normally be reached on 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Ngo can be reached on (571)272-3139. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jna3


RICKY NGO
PRIMARY EXAMINER